

July 1, 2011

VIA ELECTRONIC AND REGULAR MAIL

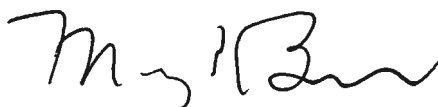
The Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
ATTN: Docket No. EX11020089
Two Gateway Center
Suite 801
Newark, NJ 07102

***Re: Energy Competition Standards, Proposed Readoption with
Amendments to N.J.A.C. 14:4***

Dear Secretary Izzo:

Enclosed please find the final comments of the Retail Energy Supply Association ("RESA") in the above referenced proceeding. Should you have any questions, please do not hesitate to contact our office.

Respectfully submitted,



Murray E. Bevan

Enclosures

**State of New Jersey
Board of Public Utilities**

**Comments of the Retail Energy Supply Association to the Proposed Readoption with
Amendments of the Energy Competition Standards, N.J.A.C 14:4**

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ respectfully submits these final comments in the above-referenced proceeding addressing the re-adoption of the Energy Competition rules codified in N.J.A.C. 14:4 *et seq.*, that are set to expire on October 15, 2011. RESA member companies, who are licensed third-party suppliers (“TPSs”) in New Jersey, provide customers with robust choices of both commodity-related services, like fixed and market-price indexed products, and green-related products such as renewable energy, demand response programs, energy efficiency and carbon reduction. Accordingly, the Board of Public Utilities’ (“BPU’s”) Energy Competition rules are particularly important to RESA, whose members have been active participants in this rulemaking proceeding, as well as the related Purchase of Receivables (“POR”)/Price to Compare (“PTC”) Working Group process.²

Throughout this rulemaking proceeding, RESA has encouraged the BPU to adopt rules that both increase competition in the New Jersey energy marketplace and provide New Jersey’s electric customers with greater access to information about energy supply and other competitive service choices. RESA is pleased that several of its suggestions have been incorporated into the proposed new rules. For example, the BPU modified the time period in which a customer may rescind a TPS contract from fourteen to seven days in N.J.A.C. 14:4-7.6, pursuant to RESA’s request. Such a change more fairly balances a TPS’s interest in contract reliance with a customer’s interest in having ample opportunity to review the contract before final commitment.

Although RESA is encouraged by the BPU’s incorporation of several of its suggestions into the proposed rules, RESA has some new concerns regarding many of the specific proposals set forth in the proposed rules. In addition, RESA has some on-going concerns with regard to Energy Competition which it has expressed before, but which are not resolved by the new rules. RESA respectfully requests that the BPU modify the rules to include the following changes, which will better serve energy consumers and promote the robust, competitive marketplace envisioned by the Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-43, *et. seq.*

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² Because RESA has been such an active participant in the separate POR/PTC working group process and has submitted several filings regarding same, RESA will not address POR/PTC in this filing.

II. NEW COMMENTS TO PROPOSED RULES

A. N.J.A.C. 14:4-2.3 Change order required for switch

RESA is highly concerned with the proposed rule's new requirement that, for purposes of telephonic verification, the TPS or third-party shall "include a recording of the entire duration of the call, from the first contact with a customer to the disconnection of the call." Many TPSs and other energy agents do not currently have the equipment or storage capacity necessary to record the entire sales call and archive all sales calls for a period of not less than six months. Purchasing and maintaining such technology can be prohibitively expensive and time-consuming. The scope of work required to implement such a rule is enormous. For example, the rules would require not only outbound calls to be recorded, but also inbound calls to a customer care center as well. Certainly, a New Jersey energy consumer could contact a customer call center or the TPS's or energy agent's main line and ultimately decide to enroll with the TPS, or modify a current agreement. TPSs and energy agents that allow for third party verifications ("TPVs") would effectively have to record all calls "from first contact with the customer." Today, many TPSs and energy agents operate in multiple jurisdictions and have significant call volumes, both inbound and outbound. A TPS would have to record all calls, as there is no way of knowing with 100% certainty if the call is originating from a New Jersey end user, or if it will or will not result in an enrollment verified through telephonic verification. Accordingly, including a requirement to record the entire duration of the call not only poses more costs upon TPSs, energy agents, and ultimately, customers, but also potentially may have a deleterious impact on the competitive marketplace by making change orders more difficult.

Additionally, the drafted energy rules presuppose that only telemarketing methods utilize telephonic or TPVs, which is simply untrue. Retailers that utilize door-to-door marketing may also utilize TPVs. Given both the draft language, which specifies the recording of a "call," and the impracticality of recording an in-person oral sales presentation, RESA assumes this requirement is limited to telemarketing. As a general matter, RESA believes it is inappropriate for the BPU to apply significant burdens to one marketing method, and not another. In this case, a requirement to record the sales presentation only under a telemarketing scenario will bias TPSs and energy agents away from telemarketing methods and towards door-to-door marketing.

Moreover, such a requirement is unnecessary, because a customer's verification is ample confirmation of his or her consent for the purposes of BPU review. RESA is unaware of a requirement to record the entire telephonic marketing call in any other retail electric market. Staff's stated intent in proposing such a rule was to be able to better "address complaints alleging deceptive marketing practices." Staff's intent is better and more effectively served if a requirement to record all sales and marketing calls that potentially result in a TPV be implemented only as a remedy to address alleged bad practices of a specific TPS or energy agent, and not be applied to the entire market. Moreover, RESA believes that N.J.A.C. 14:4-2.8, Enforcement of the Energy Competition Rules, provides the Board with the oversight and enforcement mechanisms necessary to effectively mitigate any pattern of deceptive or abusive marketing practice by a TPS or an energy agent. Therefore, RESA respectfully requests that the BPU modify this requirement to only require TPSs to record the customer's verification of the change order, rather than the entire duration of the call.

B. 14:4-2 *et seq.* Energy Anti-Slamming

The proposed rules contain copious anti-slamming revisions, yet none address a situation in which an LDC, rather than a TPS, slams a customer. Such slamming most often occurs when a change in a TPS customer's account number forces the customer to revert to utility service without his or her consent. This "reverse slamming" action compels the customer back to utility Basic Generation Service ("BGS"), typically delaying customer enrollment and resulting in lost energy savings to the customer. Moreover, the TPS is concomitantly impacted by the delayed enrollment process, resulting in lost revenues. RESA believes this type of unwarranted utility interference needs to be addressed to protect customers and TPSs alike. Thus, RESA respectfully submits that the BPU should explicitly prohibit and impose specific penalties on any LDC who engages in such "reverse slamming" practices.

C. 14:4-6.3 Government energy aggregation programs: general provisions

RESA generally supports not imposing exit fees on residential customers who opt out of an aggregation program and switch to another supplier, and believes the rule intends to prohibit such imposition when it states, "[a] residential customer may opt-out of an aggregation program at any time and switch to another energy supplier, upon 30 days notice to the lead agency and the appropriate LDC." However, to avoid confusion among TPSs and customers, RESA believes that the rule should contain an explicit prohibition on exit fees when a residential customer opts-out of an aggregation program. RESA has provided recommended, modified language, which states, "[a] residential customer may opt-out of an aggregation program at any time, without a fee, and switch to another energy supplier, upon 30 days notice to the lead agency and the appropriate LDC."

D. 14:4-6.9 Price requirements for government-private programs

RESA is encouraged that the new rule requires LDCs to post and update information regarding the "benchmark price" for each rate class in the government energy aggregation program on their websites within 24 hours of change. However, RESA believes that the rule should specifically require LDCs to include all by-passable components, such as sales and use tax, in the "benchmark price," such that customers have the opportunity to more accurately compare the prices among LDCs and TPSs. In order to foster a more robust retail marketplace, the LDC "benchmark price" should be transparent and inclusive of the by-passable pricing elements, which will allow energy consumers to make accurate and informed buying decisions.

E. 14:4-7.11 Presentation of New Jersey Sales Tax

RESA is supportive of the proposed rule's requirement that electricity prices be disclosed inclusive of sales and use tax, because it will help to reduce customer confusion and ensure more uniform and accurate presentation of competitive supply offers. In addition to TPS contracts and invoices, RESA strongly supports BPU Staff's recommendation to expand pricing inclusive of sales and use tax in the presentation of customer advertisements, marketing materials, and related solicitations. However, for the sake of consistency and to enable customers to fully compare

LDC and TPS pricing, RESA also believes that this requirement should be explicitly imposed upon LDCs in the new rules, and not just upon TPSs, as the rule is currently proposed.

III. ON-GOING CONCERNS WITH ENERGY COMPETITION RULES

A. 14:4-2.6 LDC Notice to customer of a change order

As RESA submitted in its initial comments, this rule is too vague because it fails to define any limit to “as soon as possible” and “unreasonable delay.” Instead, RESA believes that the rule should specify a specific number of days for the LDC to complete the “change order.” RESA submits that seven (7) days should be a sufficient time period.

In addition to defining time limits, RESA asked the BPU to modify this rule to require the LDCs to establish reasonable procedures to ensure that customers are not reverted to BGS service in a variety of circumstances, including when they establish service at a new location, update the name on their account, consolidate numerous meters, change usage or enter a new rate class. Under the proposed rules which contain no modifications to the previous rules, when such customers are “dropped” to BGS service, they cannot receive service with their chosen supplier until, at the earliest, the next meter read date. Moreover, the rules continue to enable LDCs to cancel a customer’s existing bill and re-bill that customer as if he or she had been served on BGS for the past month despite the fact that the customer may have already paid the TPS for the same month’s service.

A mature and efficient competitive marketplace requires a much more customer-service oriented process for establishing and maintaining service with a TPS. Accordingly, RESA recommends that the BPU modify the rules to make the enrollment process more standardized and convenient for customers. Furthermore, the BPU should require the LDCs to establish mechanisms to restore customers to their chosen energy supplier without a gap in service.

B. 14:4-2.8 Enforcement of Anti-Slamming Rules

As RESA provided in its initial comments, the anti-slamming rules should be amended to require a finding that a TPS has met a level of intent before being subjected to severe slamming penalties, which include substantial fines and license suspension or revocation. As currently proposed, a TPS is subject to the full range of BPU penalties for unintentional clerical errors that may inadvertently lead to a customer switch. While such inadvertent errors are technical violations of the Energy Competition rules, in practice they pose little or no harm to customers. Thus, strict interpretation of this rule is in conflict with both the flexible nature of the BPU’s discretion, as well as its clear policy of promoting energy competition as reflected in EDECA. Furthermore, RESA urges the BPU to consider the appropriate level of enforcement pertaining to the anti-slamming rules, based on the TPS’s intent, practice, and pattern.

Given these factors and the BPU’s increasing expertise in TPS licensing and enforcement issues as the competitive marketplace continues to mature, RESA recommends that this rule be amended to include that a TPS meet a level of intent before being subject to penalty. In addition, RESA recommends that the rule be modified to better calibrate the customer switching incident with the appropriate form of punishment.

C. 14:4-5.5 Requirements that apply after a license is issued

RESA generally supports the rule that a TPS must provide a summary of the number, type, and location of all residential customers served by the TPS, sorted by zip code, upon request by BPU staff. RESA understands the BPU may need such information pursuant to an investigation and notes that it was previously required to provide such information under N.J.A.C. 14:4-5.7.

However, as RESA pointed out in its letter providing informal comments to the February 4, 2011 Draft of the BPU's Energy Competition Rules, it is concerned with the requirement that this information must be supplied within five (5) days of the BPU's request, rather than a more workable ten (10) day time period. TPSs generally have limited staff and gathering this information is both time-consuming and cumbersome. Yet, failure to comply with this new section subjects a licensee to penalties and potential BPU proceedings for revocation, suspension, or denial of license renewal. Accordingly, RESA requests that the rule be modified to allow for a more realistic ten (10) day response time.

D. 14:4-7.10 Termination of a residential contract by a TPS

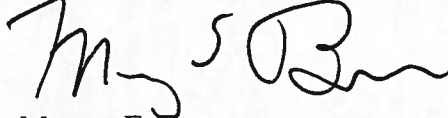
As RESA submitted in its initial comments to the rule proposal, this rule provides no clear guidance on the exact timing required for terminating a residential contract and moving a customer back to the relevant LDC. In addition, it is unclear whether a TPS may make such a notice concurrently with the 30-day notice it must provide to customers. Moreover, the rule is confusing because it bases the termination date on the date of the customer's next meter reading without specifying whether that next meter reading must be an actual meter read or whether an estimated meter reading will suffice.

The lack of clarity surrounding this rule presents challenges for TPSs when trying to quantify the risks associated with customer default. Therefore, RESA suggests that the BPU include uniform requirements regarding the timing of termination, as well as whether an actual, and not estimated, meter reading is required to establish the termination date.

IV. CONCLUSION

Although RESA believes that the proposed rules and related POR/PTC Working Group make important strides towards fostering a more robust, competitive retail energy supply market in New Jersey, RESA is concerned that they do not go far enough. RESA submits that the proposed changes it recommends herein better reflect the current state of the competitive energy marketplace, while promoting its further growth. Therefore, RESA encourages the BPU to incorporate the suggestions contained herein before adopting the final rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. E. Bevan", with a stylized flourish at the end.

Murray E. Bevan

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